

MINUTES
WV RACING COMMISSION
Tuesday, May 21, 2013
WV Lottery Conference Room

The WV Racing Commission met on May 21, 2013 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi, Commissioner Bill Phillips and Commissioner Greg McDermott. Counsel was represented by Kelli Talbott.

Chairman Rossi began the meeting by stating public comments will not be taken during the meeting but at the end of the meeting during public comments. The only time someone will be permitted to speak during the meeting is if the Commission so requests.

Approval of April 16th minutes

The Commissioners and legal counsel received the minutes from the April 16th meeting prior to this meeting. Mr. McDermott moved to accept the minutes, seconded by Mr. Phillips. The Commission approved the April 16th minutes.

Executive Director's Report
Jon Amores

The first item related to Interpretive Rules that were discussed in last month's meeting. There was discussion in the last meeting about a public hearing and the date is being set for that hearing, and will probably be set for late June.

The second item related to the Capital Improvement Policy. There is a draft in the binder. The desire is to get a final draft shortly and put the revised policy into an Interpretive Rule. As with other Interpretive Rules, the proposed policy will be made public and there will be a public comment period. Commissioner Phillips asked how the completion of the capital improvement project will be certified other than by word of mouth, phone call, etc. Commissioner Phillips stated it would be beneficial to have a certification letter of some type from the track as documentation for completion. Chairman Rossi asked that the draft be revised for this change and then recirculated to the Commission before it is made public.

The last item was for the Commissioners review and was a template on the statutory standards of review for occupational permit applications that come before the Commission.

An update was given on the horse death at the receiving barn at Mountaineer. It is moving forward and a hearing has been scheduled. An internal investigation is also being conducted. The Racing Commission is working with track management to put new procedures in place to prevent this type of situation from occurring. Commissioner Phillips asked what the time frame is for the new concept to be put into place. Jon Amores replied the time frame is the next 10 days; however, the permit hearing will take a longer period of time. Commissioner Phillips asked if the report from the Investigator had been updated from what they received initially. Jon Amores replied it has been updated and the Investigator was asked to give more

detail than simply a standard Investigative report; the investigator has been asked for his written opinion on the causes for the delay in taking action against potential rules violations.

Chairman Rossi inquired about the hiring of maintenance personnel at Wheeling Island. Jane Horvath responded that Wheeling Island has selected someone but have not actually hired him yet. Chairman Rossi asked when Wheeling Island anticipates the hiring process to be completed. Jane Horvath responded she was hoping within the week but could not guarantee it but can call and update the Commission once it has been completed.

Auditor's Report Becky Carnefix

Becky Carnefix, Director of Audits, stated the license clerks at all four tracks are working on renewals for the permits that expire in August 2013.

The auditors at all four tracks are still currently up to date with submitting pari-mutual tax information to headquarters for the sweep of revenues.

First quarter FY13 claims for the supplemental purse awards are currently being audited for payment of these awards to be made in July.

Capital Improvements – Mountaineer submitted for reimbursement 1 project totaling \$81,620 during the month of April, and was paid \$81,620 for this project, making them currently paid in full for all submissions.

Capital Improvements – Charles Town did not submit any new projects for reimbursement during the month of April, but was paid \$58,500 for an earlier project submitted.

A draft of the revised Capital Improvement Policy has been provided in the binders and the change suggested earlier by Commissioner Phillips will be made and the draft re-distributed to the Commissioners.

A tentative schedule of racetrack visits has been provided in the binders for the Commissioners.

Accountant's Report Joe Moore

Joe Moore, Accountant, stated live racing decreased in April 2013 for all tracks except Charles Town. Simulcast wagering is down 20% for the month of April 2013 from March 2013 and down 12% from the same period last year. As a result of both of these declines in revenue, state share and state revenues are also declining.

Projected year end activity and status of revenues have been provided to the Commissioners. Projected revenues for Fund 7305 (General Administrative Fund) for fiscal year ending 2013 are approximately \$2.4 million. Projected expenses for this fund for fiscal year ending 2013 are approximately \$3.5 million, resulting in a projected deficit of \$1.1 million. The Racing Commission no longer has an accumulated carry forward balance in this fund. At

this rate, the Racing Commission will no longer be able to sustain its operations through fiscal year 2014.

The Governor approved FY14 budget has been provided to the Commissioners. There are six (6) funds with the State Treasury that the Racing Commission has discretion over. The first fund is 7300. This fund is a medical expense account used solely for the medical expenses of backstretch personnel. Any carryover at fiscal year end in excess of \$5000 is transferred to the State's General Revenue Fund. Approved budget for this fund for FY14 is \$57,000.

Fund 7301 – Supplemental Purse Awards. Funding comes from unredeemed pari-mutual tickets and a deposit from fund 7308 which is a \$2 million deposit received from Excess Lottery and is apportioned out to fund 7301 and a few other areas.

Fund 7304 – Administrative account for the WV Thoroughbred Development Fund. Approved expenditure budget for this fund for FY14 is \$355,000.

Fund 7305 – General Administrative fund and was discussed earlier. Approved expenditure budget for FY14 is approximately \$3.6 million.

Fund 7307 - Administrative fund for the WV Greyhound Breeding and Development Fund. Approved expenditure budget for FY14 is approximately \$699,800.

Fund 7308 – Excess Lottery Funding. This is a \$2 million deposit from the Lottery based on the Lottery having that available after they have funded their other obligations.

Legal Update, Attorney General's Office

Kelli Talbott stated she has been to Charles Town twice since the last meeting for hearings. In addition to the written report provided to the Commissioners, one additional item has arisen and that involves a pre-suit notice from Dr. Dennis Dibbern for an alleged wrongful discharge. All three (3) groups of rules, thoroughbred, greyhound, and pari-mutuel, from the 2013 Legislative Session have been filed and were filed on May 16th and all three have an effective date of August 14th. All three rules have been posted on the Racing Commission's website.

Thoroughbred Rule Amendments for 2014

Kelli Talbott stated a Thoroughbred Rule Committee Meeting was held on May 15th. A conference call was held May 20th by the Committee to discuss the administration of Lasix rule. The Commissioners have been provided the proposals the Committee is recommending to put out for public comment. A summary of the recommendations was discussed. Motion was made by Mr. Phillips to put the proposals out for public comment, seconded by Mr. McDermott. The Commission approved the rule amendments being issued for public comment.

Charles Town Racetrack, Capital Improvement Request, \$5553 for (25) replacement 16" LED TVs for Racing and (1) 70" TV with wall-mount bracket for "Silks" patron lounge area

Becky Carnefix stated this request and the bids submitted had been reviewed, funding was available, and it was recommended for approval. Upon motion made by Mr. McDermott, seconded by Mr. Phillips, the Commission approved the request.

Charles Town Racetrack, Capital Improvement Request \$6739 for high-pressure water jet

Becky Carnefix stated the request had been amended and the amount now being requested is \$5922.24. The bids submitted had been reviewed, funding was available, and it was recommended for approval. Upon motion by Mr. Phillips, seconded by Mr. McDermott, the Commission approved the request.

Wheeling Island, request for changes in wagering format

Jon Amores stated he has asked Counsel to ensure the changes requested conform to the changes in the pari-mutual wagering rules and they do. The changes are the most frequent requests Wheeling Island receives from its customers and the desire in making these changes is that they will increase the handle. Jane Horvath stated there are 4 changes requested. The first change is changing all races to a .10 Superfecta. The second change is moving the twin tri forceout from a monthly payout to a weekly payout and move it to Friday afternoon due to being one of the largest handle days. The third change is moving the tri-super forceout to the Saturday matinee instead of Tuesday matinee because of a higher handle on Saturday. The final change is guaranteeing a payout on the Pick 4. Motion was made by Mr. McDermott to approve the request, seconded by Mr. Phillips. Commission approved the request.

Request from HBPA's and WVGOBA, racing economic impact study

Chairman Rossi stated the Racing Commission has received a letter signed by Mr. Funkhouser, Mr. Baird and Mr. Burdette requesting this study. Jon Amores stated the request is for the Racing Commission to commit the funding for a racing economic impact study through the WVU Business and Economic Research. Cost is estimated to be in the range of \$60,000-\$70,000 and would come from Funds 7304 and 7307. Commissioner Phillips commented he has a problem with not knowing the methodology to be used, credentials of persons conducting the study, etc. to approve the study at this time. He would like to review more detailed information on the study before approval. Randy Funkhouser stated there was a similar study conducted in Charles Town in 2010 which studied the effect on the impact of Jefferson County on the number of horsemen, number of breeding farms, etc. and this new study would get an idea of the impact on all racing including Mountaineer and the greyhound industry. John Cavacini, President WV Racing Association, stated that the study should include all aspects of the Associations' businesses, not just Racing. He also noted that such research would need to be bid out through the purchasing process rather than awarded directly to a vendor. Chairman Rossi suggested more time was needed to gather additional information and requested that both parties work together. Phil Reale suggested that the project should be paid for and directed by the Racing Commission. Commissioner Phillips made a motion to delay action until further information was received. Commissioner McDermott second, motion carried.

Executive Session for Occupation Permits, Caison & Jackson

Commissioner Phillips made a motion to enter executive session. Commissioner McDermott seconded, motion carried.

Commissioner McDermott made a motion to return from executive session. Commissioner Phillips seconded, motion carried.

Commissioner McDermott made a motion to conditionally approve the Occupational Permit for Jody Caison. Commissioner Phillips seconded, motion carried.

Commissioner McDermott stated that matters in Mr. Jackson's past caused the Commission great concern. However, information received in support of Mr. Jackson had persuaded the Commission to conditionally approve Mr. Jackson's permit. Commissioner McDermott noted that the Commission would have a zero tolerance policy with Mr. Jackson. Commissioner McDermott made a motion to conditionally approve the Occupation permit, subject to the terms set forth in the order to be drafted by counsel. Commissioner Phillips seconded, motion carried.

Intergovernmental Agreement

Commissioner Phillips noted that this item has continually been on the Commission's agenda since his first meeting in February. He feels that the Commission has the authority to accomplish the stipulations in the MOU without a formalized agreement. The Commission can authorize the Chairman, or Commission, to request services that may be needed without having a signed Intergovernmental Agreement. It was also noted that when Lottery personnel was requested to do work for the Racing Commission they work for the Racing Commission, not the Lottery. Commissioner Phillips made a motion to defer the Intergovernmental Agreement. Commissioner McDermott seconded, motion carried.

Public Comments

David Hammer – I appreciate the vote on the MOU. I caution the Commission to use the Commission's legal counsel from Attorney General's Office rather than Lottery personnel. Using Lottery personnel may negate attorney-client privileges.

Sam Burdette – Requested to see the Interpretive Rules. Jon Amores stated that they would be available when filed for public comment. Mr. Burdette stated that the Racing Commission had funding in both 7304 and 7307 to fund the requested Economic Impact and objects to the study including gaming. Questions why the Commission would need to go through purchasing for the study when Lester Raines study was approved through sole source. Mr. Burdette objected to not being allowed time to discuss matters prior to the Commission's vote.

Personnel Matter: Staff Review and Evaluation

Commissioner McDermott made a motion to enter executive session. Commissioner Phillips seconded, motion carried.

Commissioner McDermott made a motion to return from executive session. Commissioner Phillips seconded, motion carried.

Motion to adjourn made by Commissioner McDermott, seconded by Chairman Rossi, and motion carried.